

13.1.5. Procedures for Negotiations

- a. The refusal of any party to the negotiation to participate further in the negotiations or to continue to negotiate in good faith in the presence, or with the assistance, of the Commission shall be considered a failure to negotiate in good faith.
- b. Procedures for Negotiations
 1. The negotiations required by this Section shall conclude within one hundred and thirty five (135) days of the receipt of the bona fide request.
 2. Any party negotiating an agreement under this Section may, at any point in the negotiation, ask the Commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation.
 3. Within ten (10) days subsequent to the completion of such negotiations, the LECs negotiating parties shall file with the Commission a schedule of itemized charges and conditions for the service, setting forth the facility(ies) or function(s) provided for under the agreement.
 4. Specific Requirements to Facilitate Negotiations⁴
 - a. Resale
 1. A bona fide request for the resale of a LEC's service shall include the information required under this subsection.
 2. Each bona fide request shall include the description of the services or network features desired to be resold; geographic coverage area(s) in which the services/application is to be accessible or is to provide access; the desired service address; central office(s) involved and the proposed rate at which the service/application is to be resold.
 - b. Unbundled Access
 1. A bona fide request for unbundling service shall include the information required under this subsection.

⁴ Consensus not reached on this language. AT&T proposes deleting Section 13.1.5. CAD and ITCs prefer it be retained.

2. Each bona fide request shall provide to the serving LEC a description of the technical and functional characteristics of the requested capability; geographic coverage area(s) in which the services/application is to be accessible or is to provide access; and the desired serving address, central office(s) and NXX(s) involved.
3. Once this obligation has been met, the serving LEC shall provide a written response to the requesting telecommunications carrier within thirty (30) days as to whether or not the request will be met, or whether and what further information is needed. If further information is required, the requesting telecommunications carrier shall be able to refuse to provide any information which it considers competitively sensitive.
4. If the request is denied, the serving LEC shall provide a fully documented explanation of its reasons.

13.1.6. Procedures for Compulsory Arbitration

- a. The Commission shall establish the rates, terms and conditions of interconnection between a LEC and a telecommunications carrier only upon the filing of a petition for compulsory arbitration under this subsection. The refusal of any party to cooperate with the Commission in carrying out its function as an arbitrator, or to participate in the arbitration in the presence, or with the assistance, of the Commission shall be considered a failure to act in good faith.
- b. A petition filed pursuant to this subsection shall be filed by one of the negotiating parties no sooner than the 135th day, and no later than the 160th day, after the date the incumbent LEC received the bona fide request described in Sections 13.1.3 and 13.1.5.
- c. Standards for Arbitration
 1. In resolving by arbitration any open issues or imposing conditions upon the parties to the agreement, the Commission shall:

- a. establish any rates for interconnection, services, or network elements according to the Pricing Standards contained in this subsection; and
- b. provide a schedule for implementation of the terms and conditions by the parties to the agreement.

2. Pricing Standards

- a. Determinations by the Commission of the just and reasonable rate for interconnection arrangements shall be
 - i. based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable);
 - ii. nondiscriminatory; and
 - iii. may include a reasonable profit.
- b. Determinations by the Commission for the transport and termination of traffic shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless
 - i. such terms and conditions provide for the mutual and reciprocal recovery by each telecommunications carrier of costs associated with the transport and termination on each telecommunications carrier's network facilities of calls that originate on the network facilities of the other telecommunications carrier; and
 - ii. such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.
- ii. These standards shall not be construed:
 - a. to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or

- b. to authorize the Commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls.
- c. Determinations by the Commission for wholesale prices for resold services shall be based on the retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the incumbent LEC.
- D. A petition filed under this subsection must comply with the requirements of this subsection. Each petition must include:
 - 1. The names, addresses and telephone numbers of the representatives of the certificated LECs involved in the negotiations;
 - 2. A definitive list of those issues requiring resolution;
 - 3. The positions of each of the parties with respect to those issues;
 - 4. Any other issue discussed and resolved by the parties;
 - 5. A demonstration by the petitioning telecommunications carrier, based on the specific facts and circumstances, that:
 - a. the negotiations entered into were not conducted in good faith;
 - b. the rates, terms and conditions upon which the desired service was offered or requested were unjust, unreasonable or unreasonably discriminated between similarly situated providers;
 - c. the service sought was or was not technically and economically feasible; or

- d. any other demonstration that refusal to offer the requested service would or would not serve the public interest;
6. A certification made by an authorized representative or officer of the petitioning telecommunications carrier that the allegations set forth within the petition are true and accurate to the best of that individual's knowledge and belief; and
7. A certification that the petition was served upon the telecommunications carrier for which service is sought and is otherwise in compliance with the Commission's service rules.

13.1.7. Response to Petition

- a. Within twenty-five (25) days of the filing of a petition filed pursuant to this subsection, the non-petitioning telecommunications carrier involved in the negotiation may file a response admitting or denying in whole or in part the allegations contained in the petition.
- b. The responding telecommunications carrier may provide in its response affirmative demonstrations that the allegations set forth in the petition are in error, and/or that a finding in favor of the petitioner would not serve the public interest.
- c. The response must include a certification made by an authorized representative or officer of the responding telecommunications carrier that the information set forth within the response is true and accurate to the best of that individual's knowledge and belief.
- d. The response must also include a certification that the response was served upon the petitioning telecommunications carrier and is otherwise in compliance with the Commission's service rules.

13.1.8. Commission Action on Petitions

1. The Commission shall limit its consideration of any petition and of any response⁵ to the issues set forth in the petition and in the response to that petition.

⁵ AT&T proposes deleting the underlined portion. ITCs wish to retain it.

2. The Commission may require either party to provide additional information related to the issues raised by the petition. The Commission may institute reasonable procedures in order to develop the record necessary to resolve the petition. The Commission shall make every effort to utilize procedures that minimize the imposition of economic and administrative burdens on the parties and the Commission.
3. The Commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection 13.1.6.c upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than nine (9) months after the date on which the LEC received the request under this section.

13.1.9. Approval of Agreements

1. Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the Commission. The Commission shall approve or reject the agreement, with written findings as to any deficiencies.
2. The Commission may only reject:
 - a. an agreement (or any portion thereof) adopted by negotiation if it finds that
 - i. the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
 - ii. the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.
 - b. an agreement (or any portion thereof) adopted by arbitration if it finds that the agreement does not meet the requirements of this Section, or the Pricing Standards set forth in subsection 13.1.6. c.
 - c. If the Commission does not act to approve or reject an agreement adopted by negotiation within ninety (90) days after submission by the parties, the agreement shall be deemed approved.

- d. If the Commission does not act to approve or reject an agreement adopted by arbitration within thirty (30) days after submission by the parties, the agreement shall be deemed approved.

13.1.10. Bell Atlantic-West Virginia: Opportunity to Submit a Statement of Generally Available Interconnection Terms and Conditions

- a. Bell Atlantic-West Virginia may prepare and file with the Commission a statement of the terms and conditions that it generally offers within West Virginia to comply with Rule Sections 13.1.1 through 13.1.5.
- b. The Commission will not approve a statement submitted pursuant to item 10a of this subsection, unless such statement complies with the pricing standards in Rule Section 13.1.6.c, and Rule Section 13.1.1 through 13.1.4. The Commission may establish or enforce other requirements of State law in its review of such statement to the extent that such requirements do not establish unreasonable barriers to entry in violation of Section 253 of the Communications Act.
- c. The Commission will not later than sixty (60) days after the filing of a statement by Bell Atlantic-West Virginia, (i) complete the review of such statement pursuant to Rule Section 13.1.9.2 (including any reconsideration thereof), unless such submitting carrier agrees to an extension of the period for such review; or (ii) permit such statement to take effect, subject to investigation.
- d. Item 10c in this subsection, does not preclude the Commission from continuing to review and approving or rejecting a Bell Atlantic-West Virginia statement that has been permitted to take effect subject to investigation.
- e. Bell Atlantic-West Virginia's submission or approval of a statement under this Rule Section 13.1.10 does not relieve it of its duty to negotiate the terms and conditions of interconnection agreements pursuant to Rule Sections 13.1.1 through 13.1.5.

13.1.11. Filing Required.

- a. The Commission shall make a copy of each agreement⁶ approved under Rule Section 13.1.9 and each the Bell Atlantic-West Virginia

⁶ AT&T requested that the language "and contract tariff" be included here. This does not appear to be consistent with the Federal Act and is therefore not included.

statement approved under Rule Section 13.1.10 available for public inspection and copying within ten (10) days after the agreement or statement is approved.

- b. A LEC shall make available any interconnection, service, or network element provided under an agreement approved under Rule Section 13.1.9 to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions provided for in the agreement.

13.1.12. Exemptions, Suspensions, and Modifications

- a. Exemption of Rural Local Exchange Carriers

Rural Local Exchange Carriers (Rural LECs) are exempted from Section 13.1.4 until such time as the exemption is removed in accordance with Section 251(f) of the Telecommunications Act of 1996.

- b. Suspension for Rural LECs with less than 10,000 access lines

- 1. For the service areas of the Rural LECs with less than 10,000 access lines in West Virginia as of January 1, 1996, the Commission has determined that the public interest, convenience and necessity would be served through an additional suspension of wire-based local competition in order to avoid a significant adverse economic impact on users of telecommunications services within such service areas and in order to avoid imposing a requirement that is unduly economically burdensome on such rural LEC. The additional suspension is described in Sections 2 and 3 of this subsection, below.

- 2. Notwithstanding Section 13.1.10.a., the obligations set forth in Sections 13.1.1 through 13.1.4 shall not be applicable to any rural LEC serving fewer than 10,000 lines for a period of three (3) years from the effective date of this rule if:

- a. Within ninety (90) days of the effective date of this Rule, the LEC notifies the Commission of its intent to invoke this suspension; and
- b. The LEC does not provide telecommunications service outside of its service area.

3. Notwithstanding the existence of a suspension under this subsection 13.1.10.b, if there is a bona fide request for a telecommunications service in an exchange which is operated by a rural LEC subject to subsection 13.1.10.b, and the LEC cannot provide the service within a reasonable time frame, the Commission may conduct an evidentiary hearing to determine whether the public interest will be served by authorizing another carrier to provide the requested service.

13.1.13. Suspension and Modifications for Rural LECs

A Rural LEC may petition a Commission for a suspension or modification of the application of a requirement or requirements of Section 13.1. The Commission shall consider and grant any such petition in accordance with the requirements of Section 251(f) of the Telecommunications Act of 1996.

13.1.14. Universal Service

- a. **Services Included as Part of Universal Service.** Universal service is an evolving concept which includes at a minimum, basic local exchange telephone service as defined in Section 1.7.3, and such other services as the Commission may from time to time classify as part of Universal Service.
- b. **Universal Service Principles.** The opening up of West Virginia local exchange service to competition should not adversely affect universal Service. In order to preserve and advance Universal Service in West Virginia, consumers in all regions of the State, including low-income consumers and those in rural and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, at affordable rates that are reasonable comparable to rates for those same services in urban and low-cost areas. In addition, schools, libraries and rural health care providers should have access to advanced telecommunications services and should be provided basic services at a discount. In order to achieve these goals, the Commission will be guided by the following principles in establishing rates for services included in the definition of universal Service:
 1. Services included as a part of Universal Service should bear no more than a reasonable share of joint and common costs of facilities used to provide those services.

2. All LECs should have pricing flexibility in exchanges where there is competition. Local exchange service can be rate deregulated in an exchange upon the finding by the Commission that workable competition exists as defined in West Virginia code §24-2-3(c).
 - a. A telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition;
3. These principles shall apply to rates for both recurring and nonrecurring charges for services included as a part of Universal service.

13.1.15. Universal Service Fund.

The Commission shall establish as soon as practicable a universal Service Fund ("USF") to advance and promote the state's policy of ensuring affordable basic local exchange service to all consumers in West Virginia. The USF shall, in a manner consistent with all applicable federal principles, be established in compliance with the additional following principles.

- a. The USF shall provide cost recovery⁷ to the carrier of last resort and any other carriers⁸ designated by the Commission in those exchanges deemed by the Commission to be high cost to the extent that the costs of providing basic local exchange service are not recovered from the revenues generated by reasonable rates charged to end users.⁹
- b. The USF shall also compensate LECs for discounts given to schools, libraries and rural health care providers.
- c. The USF shall be funded in a neutral manner by all providers of intrastate telecommunications services who shall contribute, on an equitable and nondiscriminatory basis, in a manner determined by the Commission¹⁰.

⁷ The level of cost recovery to be supplied by the USF is subject to Commission review.

⁸ Some parties want payments from the USF to be limited to carriers of last resort. However, Section 214(e) of the Act allows USF support payments to any carrier which uses its facilities or a combination of its facilities and resale to provide service in an exchange and promotes the availability of that service throughout the exchange.

⁹ Consensus not reached on this section. AT&T proposed deleting it, CAD prefers to retain it.

¹⁰ Cellular One believes the cellular carriers should not be required to participate in funding a Universal Service Fund.

© Bell Atlantic

Bell Atlantic - West Virginia, Inc.
1500 MacCorkle Avenue, S.E.
Room 519
Charleston, West Virginia 25314
304 344-6358
FAX 304 344-6055

Gale Y. Given
Director
Regulatory

Attachment 1

April 1, 1996

Mr. Todd Carden
West Virginia Public Service Commission
P.O. Box 812
Charleston, WV 25323

Dear Mr. Carden:

Attached is the final Task Force document setting forth proposed rules for local competition in West Virginia. A great deal of consensus was reached in this initiative and the Task Force members should be commended for their efforts and cooperation. In some areas where consensus was not reached, there is a footnote to that regard. In addition, you have received all of the iterations during the process so you should be aware of the "discussions".

I have also included a disk with the information on it in WordPerfect. Please let me know if I can be of further assistance in this process.

Sincerely,



cc: (by FAX) Task Force Members

**Proposed Rules for West Virginia
Governing the Introduction of Local Competition**

§150-6-1

(Add to Section 1.5):

These rules are intended to be consistent with the Federal Telecommunications Act of 1996. If any provision of these rules is found to be inconsistent with the Act, then the Act shall apply.

(Add to end of 1st paragraph of Section 1.6)

Local exchange carriers may request a waiver of these rules where circumstances warrant. Waiver requests will be considered on a case-by-case basis.

1.X. Certification

- 1.X.1. No telecommunications carrier may provide local exchange service within this state without first obtaining a certificate of public convenience and necessity for such authority from the Commission under this section.**

All persons (carriers) wishing to provide or resell local exchange telecommunications services within the State of West Virginia are required to file with the Commission an original and seven (7) copies of an Application for Certificate of Public Convenience and Necessity. Such applications shall contain all the information and exhibits herein after required as specified in Section 1.X.2.

Notice of the filing of such an application shall be given by the applicant as the time of filing to each Commission-certificated telephone company that has requested in writing that the Commission provide copies, and to such other entities as may be required by the Commission. Each applicant shall publish notice of the filing of the application in accordance with West Virginia Code §24-2-11.

1.X.2. Application Requirements

The application for the certificate of public convenience and necessity required by this section shall include the following information:

- a. Applicant's business structure (e.g., corporation, partnership, etc.);

- b. Names, addresses and telephone and facsimile numbers of Applicant's principals and contacts;
 - c. A description of facilities to be constructed, if any, by the Applicant.¹
 - d. A description of the services intended to be provided by the Applicant including the geographic area wherein service will be provided;
 - e. A certification by the Applicant as to the knowledge of, and the willingness to comply with, all applicable rules and regulations of the Commission;
 - f. An illustrative tariff setting forth the terms and conditions pursuant to which the Applicant proposes to provide regulated services;
 - g. A demonstration of the Applicant's financial and managerial viability to provide service;
 - h. A demonstration of the Applicant's technical viability to provide service in a manner that will be consistent with the quality standards required by the Commission including, but not limited to assurance that the connectivity of the Applicant's network to other carriers will not impair the statewide public switched network; and
 - i. A statement that the Applicant will participate to the extent it may be required to do so by the Commission in the support of universally available telephone service at affordable rates.²
- 1.X3. Except as provided for in Section 13.1.12 [Exemptions, Suspensions and Modifications] below, the Commission shall grant such application if it finds that a grant of such application is in the public interest and is otherwise consistent with the requirements of these rules and all applicable statutes.

1.X.4. Suspension or Revocation of Certificate

Excessive subscriber complaints against a carrier shall be a basis for suspension or revocation of a carrier's Certificate of Public Convenience and Necessity if, after hearing, the Commission determines such complaints to be meritorious. In all proceedings, the Commission shall give to the carrier notice of the allegations made against it and afford the

¹ Consensus not reached on this language. AT&T proposes deleting it, CAD prefers retaining it.

² Consensus not reached on this language. AT&T proposes deleting it, CAD and ITCs prefer retaining it.

carrier with an opportunity to be heard concerning those allegations, prior to the suspension or revocation of the carrier's Certificate of Public Convenience and Necessity or other formal action. The burden of establishing the adequate provision of service is upon the carrier.

1.7 Definitions

(Add to end of 1st paragraph of Section 1.7)

Unless otherwise defined, terms used in these rule sections shall have the same meaning as that provided for in the Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996), amending the Communications Act of 1934, 47 U.S.C. §151, et seq. (the Communications Act).

- 1.7.3. "Basic Local Exchange Service" shall include: a voice-grade, two-way, single party (both residential and business) communications channel with touch tone capability; an annual "White Pages" directory listing or its functional equivalent; local switching; and access to (1) emergency services (i.e., 911/E911), (2) operator assistance, (3) directory assistance, (4) telecommunications relay service (excluding subscriber premises equipment), and (5) long distance carriers which serve the subscriber's exchange, including carrier access code dialing and presubscribed, 1-plus access where authorized.
- 1.7.25. "Interexchange Telephone Company" means a company providing interexchange telephone service pursuant to a certificate or public convenience and necessity issued under the West Virginia Code §24-2-11.
- 1.7.29. "Local Exchange Carrier" ("LEC") shall mean an entity granted a certificate of public convenience and necessity to provide local exchange services within a defined service area of the state. Incumbent LECs shall be those LECs holding certificates of public convenience and necessity prior to January 1, 1995. Until further order of the Commission, incumbent LECs are designated as eligible telecommunications carrier and carrier of last resort within their defined service territory.
- 1.7.30. "Local Exchange Service" shall mean telecommunication services that originate and terminate within local service areas in accordance with the general tariffs of the local exchange carriers, regardless of how the call is switched or routed. Local Exchange

Services shall include the provision of basic local exchange service.

1.7.40. "Non-basic Services" are telecommunications services that are not defined as Basic Local Exchange Services.

1.7.41. "Number portability" means the ability of users of telecommunications services to retain at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another.

1.7.49. "Reseller" means providers of local exchange services that provide such services by reselling services purchased from others.

1.7.53. "Telecommunications carrier" means any provider of telecommunications services.

1.7.57. "Universal service" is the widespread availability of reliable, affordable telecommunications services to all persons in West Virginia. It is more fully defined in Section 13.1.14.

Section §150-6-2 Directories

(Add to end of 2.6.1)

All LECs must either produce their own directories or arrange with another entity such as the incumbent LEC for the provisioning of directories.

2.8. Changes in Subscriber Carrier Selections.

- a. No telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of telephone exchange service or intrastate toll service except in accordance with the verification procedures stated in this section.
- b. In order for a telecommunications carrier to obtain subscriber confirmation of a change in local exchange service or a change of a primary interexchange carrier (PIC) providing intrastate toll service, a telecommunications carrier must:

1. Obtain written authorization through letters of agency; or

2. Obtain electronic authorization through the use of an 800 number; or
 3. Verify an oral change of carrier request through an independent third party; or
 4. Send an information package, including a pre-paid, returnable postcard within three days of the consumer's request for a change of carrier, and wait 14 days before submitting the consumer's order to the local exchange carrier.
- c. The letter of agency described in subsection 11.B.1 above must contain:
1. The subscriber's billing name and address and each telephone number to be covered by the change order;
 2. A line stating the subscriber's decision to change from the current local or interexchange carrier to the prospective local or interexchange carrier;
 3. A statement that the subscriber designates the local or interexchange carrier to act as the subscriber's agent for the change.
 4. A statement that the subscriber understands that any change of carrier may involve a charge to the subscriber.
- d. Any telecommunications carrier that violates the verification procedures described in this section and that collects charges for local exchange service or intrastate toll service from a subscriber shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by such subscribers after such violation.
- e. In the case of an unauthorized change in carrier and/or a change which violates the verification procedures described in this section, subscribers shall be liable only for charges up to an amount that would have been paid to their former, authorized local exchange carrier and/or intrastate interexchange carrier. The remedies provide by this section are in addition to any other remedies available by law.

Section §150-6-13 Interconnection

13.1. General Requirements

13.1.1. All Local Exchange Carriers (LECs) shall:

- a. not prohibit, and not impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications services;
- b. provide, to the extent technically feasible, number portability in accordance with national standards with requirements prescribed by the Commission which shall include the establishment of fair and equitable cost recovery mechanisms;
- c. provide dialing parity to competing LECs and providers of telephone toll service;
- d. permit all competing LECs and providers of toll telephone service to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays;
- e. afford access to the poles, ducts, conduits, and rights-of-way of such LEC to competing providers of telecommunications services on rates, terms, and conditions that are consistent with federal requirements
- f. establish reciprocal compensation arrangements for the transport and termination of telecommunications services; and
- g. comply with all applicable Commission rules and regulations regarding the provision of directory service.

13.1.2. Local Exchange Carriers shall establish at least one Point of Interconnection (POI), where other carriers may deliver terminating local traffic, in each access tandem serving area of the incumbent local exchange carrier in which the local exchange carrier originates local exchange traffic

Local Exchange Carriers shall establish at least one POI that results in no additional mileage or transport charges being assessed to the originating carrier (equivalent to end office interconnection).

Local Exchange Carriers shall mutually agree on forecasting requirements concerning the quantities of traffic that will be delivered to each Point of Interconnection.

13.1.3. Good Faith Negotiations

- a. Any telecommunications carrier may request interconnection with any LEC. A telecommunications carrier requesting interconnection with a LEC must have first applied for or obtained a certificate of public convenience and necessity to provide local exchange services with West Virginia pursuant to Section 1.X above.
- b. Within fifteen (15) days after receipt of a bona fide request from a telecommunications carrier, a LEC and the requesting carrier shall enter good faith negotiations seeking to establish the reasonable rates, terms and conditions for such interconnection.
- c. Any agreement reached between a LEC and another telecommunications carrier shall not unreasonably discriminate between similarly situated providers and shall be based on rates, terms and conditions that are just and reasonable.
- d. The negotiating parties shall follow the procedures set forth in Section 13.1.5, herein. In the event that the affected parties are unable to negotiate the rates, terms and conditions for interconnection, either party may seek compulsory arbitration by the Commission by filing a petition that complies with the procedures noted in Section 13.1.6.
- e. Nothing in this Section shall preclude the modification of the requirements contained in this Section upon mutual agreement between the negotiating parties.

13.1.4. Additional Requirements for Incumbent LECs

Subject to the requirements contained in Section 13.1.12 all incumbent LECs shall:

- a. provide for the interconnection between the facilities and equipment of any requesting telecommunications carrier and the incumbent LEC's network:
 1. for the transmission and routing of telephone exchange service and exchange access;
 2. at any technically feasible point within the LEC's network;
 3. that is at least equal in quality to that provided by the incumbent LEC to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and

4. on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this Section and Section 13.1.5;
- b. provide, to any requesting telecommunications carrier nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this Section and Section 13.1.5. An incumbent LEC shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service;
- c. offer for resale at wholesale rates any telecommunications service that the incumbent LEC provides at retail to subscribers who are not telecommunications carriers; and not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that the incumbent LEC may prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers;³
- d. provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that incumbent LEC's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks; and
- e. provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the incumbent LEC, except that the incumbent LEC may provide for virtual collocation where it demonstrates to the Commission that physical collocation is not practical for technical reasons or because of space limitations.

³ Consensus not reached on this language. AT&T proposes that the incumbent LEC may "petition the Commission for such authority to prohibit resale to different classes of customers". The ITCs propose that the new entrant should instead petition for authority to resell a service offered to one class of services to another class (e.g. Residence local service to business customers). Bell Atlantic agrees with the ITC position.

13.1.5. Procedures for Negotiations

- a. The refusal of any party to the negotiation to participate further in the negotiations or to continue to negotiate in good faith in the presence, or with the assistance, of the Commission shall be considered a failure to negotiate in good faith.
- b. Procedures for Negotiations
 1. The negotiations required by this Section shall conclude within one hundred and thirty five (135) days of the receipt of the bona fide request.
 2. Any party negotiating an agreement under this Section may, at any point in the negotiation, ask the Commission to participate in the negotiation and to mediate any differences arising in the course of the negotiation.
 3. Within ten (10) days subsequent to the completion of such negotiations, the LECs negotiating parties shall file with the Commission a schedule of itemized charges and conditions for the service, setting forth the facility(ies) or function(s) provided for under the agreement.
 4. Specific Requirements to Facilitate Negotiations⁴
 - a. Resale
 1. A bona fide request for the resale of a LEC's service shall include the information required under this subsection.
 2. Each bona fide request shall include the description of the services or network features desired to be resold; geographic coverage area(s) in which the services/application is to be accessible or is to provide access; the desired service address; central office(s) involved and the proposed rate at which the service/application is to be resold.
 - b. Unbundled Access
 1. A bona fide request for unbundling service shall include the information required under this subsection.

⁴ Consensus not reached on this language. AT&T proposes deleting Section 13.1.5. CAD and ITCs prefer it be retained.

2. Each bona fide request shall provide to the serving LEC a description of the technical and functional characteristics of the requested capability; geographic coverage area(s) in which the services/application is to be accessible or is to provide access; and the desired serving address, central office(s) and NXX(s) involved.
3. Once this obligation has been met, the serving LEC shall provide a written response to the requesting telecommunications carrier within thirty (30) days as to whether or not the request will be met, or whether and what further information is needed. If further information is required, the requesting telecommunications carrier shall be able to refuse to provide any information which it considers competitively sensitive.
4. If the request is denied, the serving LEC shall provide a fully documented explanation of its reasons.

13.1.6. Procedures for Compulsory Arbitration

- a. The Commission shall establish the rates, terms and conditions of interconnection between a LEC and a telecommunications carrier only upon the filing of a petition for compulsory arbitration under this subsection. The refusal of any party to cooperate with the Commission in carrying out its function as an arbitrator, or to participate in the arbitration in the presence, or with the assistance, of the Commission shall be considered a failure to act in good faith.
- b. A petition filed pursuant to this subsection shall be filed by one of the negotiating parties no sooner than the 135th day, and no later than the 160th day, after the date the incumbent LEC received the bona fide request described in Sections 13.1.3 and 13.1.5.
- c. Standards for Arbitration
 1. In resolving by arbitration any open issues or imposing conditions upon the parties to the agreement, the Commission shall:

- a. establish any rates for interconnection, services, or network elements according to the Pricing Standards contained in this subsection; and
- b. provide a schedule for implementation of the terms and conditions by the parties to the agreement.

2. Pricing Standards

- a. Determinations by the Commission of the just and reasonable rate for interconnection arrangements shall be
 - i. based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable);
 - ii. nondiscriminatory; and
 - iii. may include a reasonable profit.
- b. Determinations by the Commission for the transport and termination of traffic shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless
 - i. such terms and conditions provide for the mutual and reciprocal recovery by each telecommunications carrier of costs associated with the transport and termination on each telecommunications carrier's network facilities of calls that originate on the network facilities of the other telecommunications carrier; and
 - ii. such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.
- ii. These standards shall not be construed:
 - a. to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or

- b. to authorize the Commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls.
 - c. Determinations by the Commission for wholesale prices for resold services shall be based on the retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the incumbent LEC.
- D. A petition filed under this subsection must comply with the requirements of this subsection. Each petition must include:
- 1. The names, addresses and telephone numbers of the representatives of the certificated LECs involved in the negotiations;
 - 2. A definitive list of those issues requiring resolution;
 - 3. The positions of each of the parties with respect to those issues;
 - 4. Any other issue discussed and resolved by the parties;
 - 5. A demonstration by the petitioning telecommunications carrier, based on the specific facts and circumstances, that:
 - a. the negotiations entered into were not conducted in good faith;
 - b. the rates, terms and conditions upon which the desired service was offered or requested were unjust, unreasonable or unreasonably discriminated between similarly situated providers;
 - c. the service sought was or was not technically and economically feasible; or

- d. any other demonstration that refusal to offer the requested service would or would not serve the public interest;
- 6. A certification made by an authorized representative or officer of the petitioning telecommunications carrier that the allegations set forth within the petition are true and accurate to the best of that individual's knowledge and belief; and
- 7. A certification that the petition was served upon the telecommunications carrier for which service is sought and is otherwise in compliance with the Commission's service rules.

13.1.7. Response to Petition

- a. Within twenty-five (25) days of the filing of a petition filed pursuant to this subsection, the non-petitioning telecommunications carrier involved in the negotiation may file a response admitting or denying in whole or in part the allegations contained in the petition.
- b. The responding telecommunications carrier may provide in its response affirmative demonstrations that the allegations set forth in the petition are in error, and/or that a finding in favor of the petitioner would not serve the public interest.
- c. The response must include a certification made by an authorized representative or officer of the responding telecommunications carrier that the information set forth within the response is true and accurate to the best of that individual's knowledge and belief.
- d. The response must also include a certification that the response was served upon the petitioning telecommunications carrier and is otherwise in compliance with the Commission's service rules.

13.1.8. Commission Action on Petitions

- 1. The Commission shall limit its consideration of any petition and of any response⁵ to the issues set forth in the petition and in the response to that petition.

⁵ AT&T proposes deleting the underlined portion. ITCs wish to retain it.

2. The Commission may require either party to provide additional information related to the issues raised by the petition. The Commission may institute reasonable procedures in order to develop the record necessary to resolve the petition. The Commission shall make every effort to utilize procedures that minimize the imposition of economic and administrative burdens on the parties and the Commission.
3. The Commission shall resolve each issue set forth in the petition and the response, if any, by imposing appropriate conditions as required to implement subsection 13.1.6.c upon the parties to the agreement, and shall conclude the resolution of any unresolved issues not later than nine (9) months after the date on which the LEC received the request under this section.

13.1.9. Approval of Agreements

1. Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the Commission. The Commission shall approve or reject the agreement, with written findings as to any deficiencies.
2. The Commission may only reject:
 - a. an agreement (or any portion thereof) adopted by negotiation if it finds that
 - i. the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
 - ii. the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity.
 - b. an agreement (or any portion thereof) adopted by arbitration if it finds that the agreement does not meet the requirements of this Section, or the Pricing Standards set forth in subsection 13.1.6.c.
 - c. If the Commission does not act to approve or reject an agreement adopted by negotiation within ninety (90) days after submission by the parties, the agreement shall be deemed approved.